

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

**TITLE 8: Chapter 4, Subchapter 7, Article 107, Section 5144
of the General Industry Safety Orders**

Fit-Testing for M. Tuberculosis**SUMMARY**

As a result of an action taken at the June 17, 2004, meeting of the Occupational Safety and Health Standards Board (Board), effective October 18, 2004, employers who provide respirators for protection against M. Tuberculosis are required to comply with section 5144. Until that time, employers have been required to comply with section 5147. Section 5144 differs from section 5147 in that it has more specific requirements for the written program, program administration, respirator selection, medical evaluation, fit-testing, use, training and record-keeping. Specifically, in regards to this proposal, section 5144 requires that employees be medically evaluated using the questionnaire in Appendix C, or equivalent.

Subsequent to the June 17, 2004, meeting, the Division of Occupational Safety and Health (Division) was informed that requirement to conduct new initial medical evaluations of each respirator user, utilizing the questionnaire in Appendix C of section 5144, created a problem for the regulated community, both in terms of the ability to comply by the effective date, and in terms of cost. In response to these concerns, the Division proposed an emergency rulemaking that permitted employers to rely on medical evaluations that had been conducted on or before October 18, 2004, for the use of filtering facepiece respirators to protect against M. Tuberculosis, rather than requiring employers to conduct another initial medical evaluation of each respirator user based on Appendix C.

This proposal would establish that initial medical evaluations that were accepted under the emergency rulemaking would also be accepted after the term of emergency expires. The existing medical evaluations provide equivalent protection to the evaluations included in section 5144, Appendix C and the equivalent federal standard 29CFR 1910.134 Appendix C.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

The specific purpose of the proposal is to amend subsection 5144(e)(2) to accept medical evaluations conducted on or before October 18, 2004, as equivalent, within the scope of the exception, to a medical evaluation based on Appendix C of section 5144. The proposal is necessary to avoid requiring employers to conduct an additional initial medical evaluation for employees who had already been evaluated with other generally accepted questionnaires or examinations, and found to be qualified to use filtering facepiece respirators for tuberculosis control.

Members of the regulated public informed the Division that the requirement to re-do all of the medical evaluations done before October 18, 2004, would unnecessarily burden employers with a very time-consuming process. Medical professionals in healthcare and other affected settings currently use alternative questionnaires and examinations (Document 1). Generally, such questionnaires provide equivalent or more extensive health assessments to that provided by Appendix C. Medical professionals have advised the Division (Document 2) that the standard procedures used by healthcare professionals in evaluating employees for their ability to use filtering facepiece respirators for protection against M. Tuberculosis will provide equivalent protection to that afforded by using the Appendix C questionnaire in this context. Furthermore, if an employee who may potentially be exposed to M. Tuberculosis is medically cleared using an appropriate assessment tool to perform their usual job duties, no additional health risk is anticipated by the use of a filtering facepiece respirator. Further, the risk of any potential negative consequences to an employee from failure to be evaluated specifically using the questionnaire in Appendix C, is significantly outweighed by the risk of infection from M. Tuberculosis if appropriate respiratory protection is not used.

DOCUMENTS RELIED UPON

1. Medical evaluation questionnaires used by various institutions in evaluating employees for the use of filtering facepiece respirators to protect against M. Tuberculosis.
2. Letter to Mr. Len Welsh, Acting Chief, Division of Occupational Safety and Health, dated August 18, 2004, from Dr. Janice Prudhomme, Public Health Medical Officer II, California Department of Health Services.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the standard does not constitute a "new program or

higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.